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Federal Communications Commission
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
)

Joint Petition of Price Cap Holding)
Companies for Conversion of Average)
Schedule Affiliates to Price Cap Regulation)
and for Limited Waiver Relief)
)

WC Docket No. 12- _____

**JOINT PETITION OF PRICE CAP HOLDING COMPANIES FOR
CONVERSION OF AVERAGE SCHEDULE AFFILIATES TO
PRICE CAP REGULATION AND FOR
LIMITED WAIVER RELIEF**

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Dated: March 1, 2012

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to Price Cap Regulation and for Limited)
Waiver Relief)

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LIMITED WAIVER RELIEF**

Consolidated Communications, Inc.; Frontier Communications Corporation; and Windstream Corporation ("Petitioners"), by their undersigned counsel, request authority to convert each of their average schedule ILEC affiliates (the "Subsidiaries", identified on page 3 of this Petition) from an average schedule company to price cap regulation no later than July 1, 2012, and, to the extent necessary, limited waivers of the applicable Part 61 and 69 regulations, including Section 61.41(a)(3) to the extent necessary to enable such conversion. Establishing a reasonable pathway for this conversion is in the public interest as it will, among other things: increase consumer welfare by enhancing competition; hold steady or reduce access rates; and provide well established and tested regulatory incentives to encourage the Subsidiaries to maintain and enhance efficient operations.

Petitioners propose a reasonable approach for conversion to price cap regulation that relies upon the applicable portions of the framework established in the *CALLS Order* ("CALLS

plan” or “CALLS”),¹ and all applicable changes to the FCC’s price cap regulations recently adopted as part of the Commission’s reform of the intercarrier compensation regime and Universal Service Fund (“*USF/ICC Transformation Order*”).²

As such, the requested conversion to price cap regulation and related waiver requests will put Petitioners in a similar regulatory position to other comparable price cap carriers and would be consistent with the Commission’s longstanding policy and practice of promoting efficient forms of regulation. Furthermore, since each of the Petitioners is a holding company with primarily price cap-regulated subsidiaries, the transition of the Subsidiaries from an average schedule company to price cap carriers will provide administrative efficiencies for each holding company as a whole.

I. INTRODUCTION AND SUMMARY OF PETITION

Each of the Petitioners is an ILEC holding company that has both price cap and average schedule ILEC affiliates. Each of the Subsidiaries is an ILEC that is currently regulated as an average schedule company, a form of rate-of-return (“ROR”) regulation. The Petitioners and the Subsidiaries are identified in Table 1, following:

¹ *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers*, Sixth Report and Order, 15 FCC Rcd 12962 (2000) (“*CALLS Order*”), *aff’d in part, rev’d in part and remanded in part*, *Texas Office of Public Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), *on remand*, 18 FCC Rcd 14976 (2003).

² *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rule-making WC Docket No. 10-90, et al., FCC 11-161 (2011) (“*USF/ICC Transformation Order*”).

Table 1

Holding Company	Average Schedule Subsidiaries
Consolidated Communications Inc.	Consolidated Communications of Pennsylvania Company
Frontier Communications Corporation	Frontier Communications of Lamar County Frontier Communications of Georgia Frontier Communications of Depue Frontier Communications of Indiana Frontier Communication of Mississippi Frontier Communications of St Croix Frontier Communication of Viroqua Commonwealth Telephone Company
Windstream Corporation	Windstream Accucomm Telecommunications, LLC Windstream Georgia Telephone, LLC Windstream D&E, Inc. Windstream Conestoga, Inc. Windstream Buffalo Valley, Inc. Windstream Montezuma, Inc.

Conversion of the Subsidiaries to a price cap regime will advance Commission goals and serve the public interest in a number of ways. Efficient access pricing mechanisms like price cap regulation generate incentives to optimize a carrier's cost structure and promote competition. The price cap rate structure is efficient and price cap regulation is the Commission's preferred mode of regulation. Price cap regulation will encourage continued efficient operation by the Subsidiaries, which will benefit their customers and provide the companies with a regulatory structure that delivers appropriate incentives. Also, conversion will enable each of the Petitioners to gain additional administrative efficiencies through the uniform treatment of all of its subsidiaries under price cap regulation for those services that remain subject to such regulation pursuant to the *USF/ICC Transformation Order* recently adopted by the Commission.

A. Petitioners Propose to Convert to a Total Company Price Cap Structure Under the CALLS Framework and *USF/ICC Transformation Order* Reforms.

Section 61.41(a)(3) of the Commission's rules unambiguously permits incumbent local exchange carriers ("ILECs") to elect price cap regulation.³ Nonetheless, the *CALLS Order*, which promulgated the existing regulatory framework for price cap carriers, and the *USF/ICC Transformation Order*, which removed switched access services from price cap regulation, do not leave a clear path for an average schedule carrier to convert to price cap regulation for those services that remain subject to that regime. However, a number of carriers, including some Petitioners, have filed previous petitions for conversion from ROR to price cap regulation, which have been granted by the FCC⁴ and the combined *CALLS Order* and *USF/ICC Transformation Order* framework establishes a reasonable path for the Subsidiaries to convert from average schedule to price cap regulation in a manner that is consistent with the Commission's evolving price cap rules. The Subsidiaries do not propose to increase its switched or special access rates in any of its service areas as of July 1, 2012. Moreover, the conversion path proposed in this Petition will not burden USF since, even without grant of the instant Petition, each of the Subsidiaries will be treated as a price cap regulated carrier for the purposes of the reformed Connect America Fund ("CAF") under the new *USF/ICC Transformation Order*.⁵

Because the path to price cap regulation remains unclear in light of the *CALLS Order* and *USF/ICC Transformation Order*, Petitioners propose a reasonable approach to conversion to

³ 47 C.F.R. § 61.41(a)(3). See *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786 (1990) ("*LEC Price Cap Order*") (subsequent history omitted).

⁴ See e.g., *Consolidated Order; Windstream Petition For Conversion To Price Cap Regulation And For Limited Waiver Relief*, WC Docket No. 07-171, filed Aug. 6, 2007.

⁵ See *USF/ICC Transformation Order*, at ¶ 129.

price cap regulation that tracks petitions previously filed by ROR carriers, relying to the largest extent possible upon the existing CALLS framework and *USF/ICC Transformation Order* reforms.

B. Price Cap Regulation Will Allow the Subsidiaries to Continue Efficient Operations in a Changing Market.

As average schedule companies, the Subsidiaries are already operating under a form of incentive regulation. Their interstate revenue requirements are based on cost formulas developed by NECA, which represent the average cost of rate of return ILECs having similar operating characteristics, rather than the company's actual costs. Therefore, to the extent that an average schedule ILEC can operate at less than the average cost of other ILECs, it is able to realize an increased return on its investment, whereas it would suffer a decreased return if its costs exceeded the other companies' average. This incentive to operate efficiently is only relative, however. Because the NECA average schedule formulas are subject to adjustment each year, each Subsidiary's revenues and return on investment are unpredictable and this fluctuation undermines the incentive feature of average schedule regulation.

C. Price Cap Regulation Conversion Proposal.

With the requested waivers, the main elements of the proposed pricing and universal service regime are as follows:

- **Price Cap Structural Rules:** As of the effective date, which should be no later than July 1, 2012, the proposed price cap regulatory structure that would apply to the Subsidiaries' study areas will be based on the structural rules established in the *CALLS Order* and *USF/ICC Transformation Order*.

- **Switched Access:** All average schedule companies participate in the switched access rates of the National Exchange Carrier Association, Inc. ("NECA") Tariff No. 5. Petitioners

propose to maintain those switched access rates until July 1, 2012, at which time each of the Subsidiaries will withdraw from the NECA tariff and will file its own switched access tariff reflecting rates equal to those in effect as of January 1, 2012. Petitioners respectfully request a waiver of § 69.3(i), if necessary, to permit them to notify NECA of the Subsidiaries' withdrawal from the Association tariff within thirty (30) days after a Commission order granting this Petition. In addition, each Subsidiary will remove its switched access services from price cap regulation, as directed by the Commission in the newly adopted Section 51.901(a), immediately upon conversion to price cap regulation. Thus, overall, the Subsidiaries' interstate switched access rates under the proposed waiver will be frozen, similar to the switched access rates of other price cap carriers, until the reductions mandated by the intercarrier compensation transition rules take effect.⁶

- **Special Access:** Petitioners propose that, upon their withdrawal from NECA Tariff No. 5, each Subsidiary will file its own special access tariff using the January 1, 2012 NECA special access rates, subject to any rate adjustments required or permitted by the price cap regulations.

- **Universal Service:** Conversion to price cap regulation will not impact the Universal Service Fund. As part of the *USF/ICC Transformation Order*, the Commission determined that average schedule carriers that are affiliated with holding companies for which the majority of access lines are regulated under federal price caps will be treated as price cap carriers for the purpose of calculating their CAF support. As a result, even without this Petition, the Subsidiar-

⁶ If this Petition is granted, the Subsidiaries will transition their interstate switched access rates according to the schedule applicable to price cap ILECs, rather than the longer transition period allowed to rate-of-return ILECs.

ies' CAF support will be calculated as if it were price cap regulated, and therefore, grant of this Petition will not impact CAF funding or USF in general.

II. THE COMMISSION'S RULES ALLOW CARRIERS TO CONVERT FROM AVERAGE SCHEDULE TO PRICE CAP REGULATION

The Commission's price cap rules, adopted in 1990, unambiguously permit an ILEC to elect price cap regulation.⁷ Neither the subsequent *CALLS Order*, nor any other Commission order, provides a method for the conversion of an average schedule company to price cap regulation outside the context of the merger of a price cap regulated carrier and average schedule company.⁸ However, the Commission has granted numerous petitions for conversion to price cap regulation by ROR carriers,⁹ and has never suggested that the price cap election provision, which remains in the Commission's rules, has been limited or modified.¹⁰ Indeed, the Commission recently stated in the *USF/ICC Transformation Order* that it "continues to encourage carriers to undergo such conversions."¹¹

This issue can be remedied by allowing the Subsidiaries to elect a form of price cap regulation utilizing the current post-CALLS price cap rules for those services remaining under price caps after the *USF/ICC Transformation Order*. This conversion to price cap regulation would serve the public interest and achieve the goals of the pricing and universal service policies implemented in the *CALLS Order* and *USF/ICC Transformation Order*.

⁷ 47 C.F.R. § 61.41(a)(3).

⁸ *Id.*

⁹ Valor Communications Group, Inc., Petition for Waiver, 21 FCC Rcd 859, 863 (Wireline Comp. Bur. 2006) ("*New Valor Waiver Order*").

¹⁰ 47 C.F.R. § 61.41(a)(3).

¹¹ *USF/ICC Transformation Order* at ¶ 814.

III. CONVERSION TO PRICE CAP REGULATION IS IN THE PUBLIC INTEREST

As the Commission explained in the *LEC Price Cap Order*, price cap regulation “permit[s] LECs to migrate their rates toward a set of prices that enhances efficiency.”¹² Price cap regulation rewards “companies that become more productive and efficient.”¹³ This productivity and efficiency ultimately benefits consumers.

Price cap regulation stimulates residential and business customer demand for telecommunications services.¹⁴ More efficient use of and greater demand for the nationwide telecommunications network, in turn, contributes to overall economic growth by reducing the cost of telecommunications services that are used by other industries to produce goods and services.¹⁵

These factors also facilitate the development of competition. As the Commission explained:

In the case of the LECs’ interstate services, the optimal form of regulation would largely replicate the competitive outcome. ... The current LEC price cap plan represents, in large part, a program of improving consumer welfare by introducing profit incentives and price constraints that more closely replicate the operation of competition than traditional, rate-of-return regulation.¹⁶

The public benefits of price cap regulation are especially evident in the post-CALLS environment. The *CALLS Order* greatly improved the economic benefits of price cap regulation by imposing a cost causative rate structure that drives down usage rates by forcing carriers to

¹² *LEC Price Cap Order*, 5 FCC Rcd at 6791.

¹³ *Id.* at 6787.

¹⁴ *See LEC Price Cap Order* at 6792.

¹⁵ *Price Cap Performance Review for Local Exchange Carriers*, First Report and Order, 10 FCC Rcd 8961, 8965 (1995).

¹⁶ *Id.* at 9002.

recover non-traffic sensitive costs with fixed rates.¹⁷ By reducing implicit subsidies and making them explicit, the post-CALLS rate structure “will be more apparent to the end user,” thus encouraging competitive entry and thereby promoting local and long distance competition and more rational investment decisions.¹⁸ In addition, the Commission recently found that the price cap regulations and reduced interstate access charges established in the *CALLS Order* have led to end users realizing “benefits that exceeded most expectations.”¹⁹ These benefits to consumers will continue with the establishment of the transitional price cap rates and move to bill-and-keep set forth in the *USF/ICC Transformation Order*, which will provide further transparency to end users. Allowing the Subsidiaries to convert to price cap regulation will provide them with the opportunity to compete on an even playing field with other price cap carriers and provide these same benefits to their end users.

A. The *USF/ICC Transformation Order* Provided a Transition Structure to New Reduced Switched Access Rates Which Consolidated-PA Should Be Allowed to Adopt.

The *CALLS Order* made the CALLS rate structure rules (*e.g.*, Subscriber Line Charge (“SLC”) caps, elimination of the residential and single business line Presubscribed Interexchange Carrier Charge (“PICC”), and the separate special access price basket) mandatory for all price cap ILECs.²⁰ The Commission also required price cap ILECs to choose whether to accept the CALLS rate level components or submit a forward-looking cost study for the re-initialization of

¹⁷ *CALLS Order*, 15 FCC Rcd at 13017 (discussing the *Access Charge Reform Order*, in which the FCC, “[r]ecognizing that a significant portion of local switching costs . . . do not vary with usage, [] required that such non-traffic sensitive costs be recovered on a flat-rated, rather than usage sensitive basis.” See *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, 16034 (1997) (subsequent history omitted)).

¹⁸ *CALLS Order*, 15 FCC Rcd at 12964, 12980, 12990-94, 12997-98.

¹⁹ *USF/ICC Transformation Order* at ¶ 751.

rates.²¹ The rate level components included each carrier's share of the industry-wide "up-front reduction" of \$2.1 billion in switched access charges, the "X-factors" used to reduce rates, and the switched access usage rate "target" levels for different categories of carriers.

In its *USF/ICC Transformation Order* released in November 2011, the FCC effectively eliminated the price cap regulations established in the *CALLS Order* as they applied to switched access service, and adopted a transition plan to move price carriers to the "bill-and-keep" procedure for determining switched access rates. Nonetheless, the transition plan for price cap carriers is different than that for ROR carriers, so that a company's "price cap" status remains relevant for switched access services even though switched access rates are being removed from price cap regulation. While the Commission found that the *CALLS* plan "resulted in substantial decreases in calling prices," changes in the marketplace, including "arbitrage and marketplace distortions," led it to establish a detailed transition plan to move from the current formulas used to determine price cap rates to a bill and keep procedure for all carriers.²²

As part of the transition plan, all rates for intrastate and interstate services included in Interstate End Office Access Services, Tandem Switched Transport Access Services, and Dedicated Transport Access Services were capped as of December 29, 2011 and will remain at those rates until the implementation of the transition beginning on July 1, 2012.²³ In addition, any switched access services not included in the definitions of those services will be removed from

(Footnote Continued from Previous Page.)

²⁰ *CALLS Order*, 15 FCC Rcd at 12984.

²¹ *Id.* at 12984-85.

²² *USF/ICC Transformation Order*, at ¶¶ 751, 752.

²³ 47 C.F.R. § 51.907(a)

price cap regulation on the same date.²⁴ Over the course of the next several years, price cap carriers will move from their current capped rates to bill-and-keep for all terminating traffic within their serving areas by July 1, 2018.²⁵

With the establishment of the transition plan and change to bill-and-keep, the Subsidiaries should be allowed to adopt the currently frozen NECA Tariff No. 5 switched access rates in their own tariffs on July 1, 2012 or upon the effective date of this order, including the removal of the excluded services from price cap regulation as required by Section 51.907(a). The Subsidiaries will then become subject to the intercarrier compensation rate transition schedule for price cap carriers as set forth in the remainder of Section 51.907, and will be eligible for recovery of intercarrier compensation revenues under Section 51.915 (rather than Sections 51.909 and 51.917, which would apply to them if they remained as average schedule companies).²⁶ This waiver will benefit the public interest by allowing the Subsidiaries to complete the transition to bill-and-keep two years sooner than would otherwise be the case, resulting in lower charges for termination of calls to their end users. Further, because the revenue recovery process for price cap companies under Section 51.915 is more restricted than for rate-of-return companies under

²⁴ *Id.*

²⁵ 47 C.F.R. § 51.907(h).

²⁶ New Rule 51.903(f) defines a “Price Cap Carrier” by reference to § 61.3(aa), which in turn applies to any carrier subject to price cap regulation under §§ 61.41 *et seq.* Thus, if the Commission approves this waiver, the Subsidiaries will be treated as Price Cap Carriers for purposes of Part 51, Subpart J in accordance with the terms of those rules. However, Petitioners request clarification or, if necessary, a waiver of § 51.915(b)(5) and (c) to establish that the Subsidiaries’ interstate switched access revenues for purposes of the definitions of Initial Composite Terminating End Office Access Rate and 2011 Price Cap Carrier Base Period Revenues means revenues collected from switched access customers, without adjustment for payments to or receipts from the NECA pool. Since the Subsidiaries’ switched access rates in 2012 and subsequent years (until they are eliminated) will be based on the NECA rates that it billed in 2011, their eligibility for access revenue recovery should be based on the revenues generated by those rates prior to pooling adjustments.

Section 51.917, the Subsidiaries' end users and the Connect America Fund will be relieved from at least some of the revenue recovery burden that would have been placed upon them absent a waiver.

B. The Existing NECA Special Access Rates Are Reasonable and No Adjustment is Necessary or Required.

Since the *CALLS Order* froze price cap special access rates in 2004, the Subsidiaries should not be required to change or reduce their existing special access rates upon conversion to price cap regulation. The special access rates established in NECA Tariff No. 5, adopted by all average schedule companies as well as other carriers, are reasonable, competitive and uniform. Furthermore, the *USF/ICC Transformation Order* declined to address any changes to special access rates,²⁷ and instead the FCC is currently evaluating these rates through a separate proceeding.²⁸ As such, allowing Subsidiaries to file their own special access tariffs using the current NECA Tariff No. 5 special access rates, subject to any adjustments required or permitted by the price cap regulations, will place these companies on even footing with other price cap carriers, and allow them to continue to provide the same service at the same rates to their special access customers.

Also, requiring the Subsidiaries to perform cost studies to initialize their price cap rates for either switched or special access would be unduly burdensome and impracticable. These companies have never developed the basic studies and details necessary to form the basis for a full cost study, like traffic studies, COE and CWF studies, because they have never had a need to

²⁷ *USF/ICC Transformation Order* at ¶ 804.

²⁸ *Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 11701 (2005). Petitioners understand that any regulatory changes adopted as a result of that proceeding would apply to the Subsidiaries prospectively if this Petition is granted.

do so, and these would be impossible to complete in time for a July 1, 2012 annual filing. Requiring a re-initialization of special access rates based on a cost study would also penalize the Subsidiaries for efficiencies they have achieved while operating under average schedule regulation (which, as discussed above, is effectively a form of incentive regulation). This would harm the public interest by discouraging other efficiently-operating average schedule companies from seeking to convert to price cap regulation. Further, if the Subsidiaries were required to complete cost studies as a precondition to conversion, the resulting cost study costs would be passed through to special access customers, resulting in unnecessary rate increases.

C. Universal Service Funding Will Not Be Impacted By the Subsidiaries' Conversion to Price Cap Regulation.

The proposed conversion to price cap regulations will have no impact on the Subsidiaries' USF funding. The *USF/ICC Transformation Order* instituted significant reform to the high cost fund portion of USF and adopted regulations to transition the fund to the CAF which, among other things, will help fund broadband services in high-cost areas.²⁹ As part of the transition to CAF, the FCC determined that it would "treat as price cap carriers the rate-of-return operating companies that are affiliated with holding companies for which the majority of access lines are regulated under price caps."³⁰ While these ROR companies, including average schedule carriers, affiliated with price cap carriers are not required to convert to price cap regulations,³¹ their high cost funding will nevertheless be determined as if they were price cap regulated. For each of the Petitioners, the majority of the overall company's access lines are regulated as price cap, and therefore all of the Subsidiaries will be treated as price cap companies for the purpose of

²⁹ See *USF/ICC Transformation Order* at ¶ 115.

³⁰ *Id.* at ¶ 129.

calculating future high-cost and CAF support. As such, the proposed conversion to price cap regulation will have no effect on the amount of USF support the Subsidiaries will receive and will have no impact on the fund generally.

D. Limited Waiver of Section 61.41(a)(3) and Other Part 61 and 69 Regulations as Necessary is in the Public Interest.

Section 61.41(a)(3) allows qualified local exchange carriers to convert to price cap regulations if they do not participate “in any Association tariff.”³² As described herein, each Subsidiary currently participates in the NECA Tariff No. 5 as required under the rules and proposes to withdraw from that tariff and file its own switched access and special access tariffs based upon the current NECA rates subject to any special access rate adjustments required by the rules. The proposed conversion to price cap regulation is in the public interest and will generate significant efficiencies for the company and its end users. Subsidiaries therefore request a waiver of Section 61.41(a)(3) to allow them to convert to price cap regulation simultaneously with their withdrawal from the Association tariffs, and to file their own switched access and special access tariffs as described herein. Denial of the requested conversion based on the Subsidiaries’ current participation in the NECA tariff would be unreasonable and would preclude any average schedule company from conversion to price cap regulation. As such, the Commission should waive Section 61.41(a)(3) and any other applicable Part 61 and 69 provisions necessary to enable the proposed conversion to price cap regulation.

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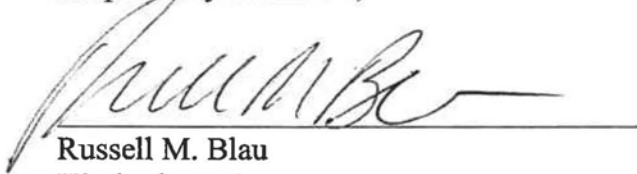
³¹ *Id.* at n.203.

³² 47 C.F.R. § 61.41(a)(3).

IV. CONCLUSION

Conversion of the Subsidiaries from average schedule company to price cap regulation under the terms proposed above will promote efficiency, encourage network investment and competition, and reduce its average switched access rates. Because the waiver relief requested will make it possible for the Subsidiaries to complete its conversion and avoid unnecessary, costly and burdensome compliance requirements, this relief, and any other waiver relief the Commission may deem necessary, should be granted in order to generate the resulting substantial public benefits.

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